

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

MICHAEL LUTMAN,

Plaintiff,

v.

NEWREZ, LLC,

Defendant.

§
§
§
§
§
§
§
§
§

Civil Action File No. _____

Removed from
Cherokee County
Magistrate Court
Case No. 23MCE0995

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, Defendant NewRez, LLC (“NewRez”),¹ hereby removes this action from the Magistrate Court of Cherokee County, Georgia, to the United States District Court for the Northern District of Georgia, Atlanta Division. In support of removal, the NewRez states as follows:

THE STATE COURT ACTION

1. On or about March 3, 2023, Plaintiff Michael Noris Lutman (“Plaintiff”) filed a Statement of Claim styled *Michael Lutman v. NewRez, LLC*,

¹ The caption of Plaintiff’s *pro se* Statement of Claim filed in the Magistrate Court of Cherokee County, Georgia lists the party-defendant as “Baron Silverstein-NewRez, LLC.” However, a review of Plaintiff’s allegations and the remaining documents filed in the state court demonstrate that NewRez, LLC, not Mr. Silverstein, individually, is the intended party-defendant in this action. Mr. Silverstein is the President and Chief Executive Officer (CEO) of NewRez, LLC.

Case No. 23MCE0995, in the Magistrate Court of Cherokee County, Georgia (the “State Court Action”).

2. In the State Court Action, Plaintiff asserts a claim for violations of the Real Estate Settlement Procedures Act, 12 U.S.C. §§ 2601, *et. seq.* (“RESPA”). Specifically, Plaintiff alleges that NewRez did not respond to a qualified written request pursuant to RESPA.

3. On March 22, 2023, NewRez was served with a copy of the Summons and Statement of Claim in the State Court Action. This Notice of Removal is being filed within thirty (30) of the date that NewRez was served with a copy of the Summons and Statement of Claim and is therefore timely pursuant to 28 U.S.C. § 1446(b).

4. The United States District Court for the Northern District of Georgia, Atlanta Division, has original jurisdiction pursuant to 28 U.S.C. § 1331 because this action raises issues and claims arising under the laws of the United States. *See* 28 U.S.C. § 1441(a).

PROCEDURAL REQUIREMENTS

5. For removal purposes, venue is proper in this Court pursuant to 28 U.S.C. §1441(a) and Local Rule 3.1 because the United States District Court for the Northern District of Georgia, Atlanta Division, is the federal judicial district

and division embracing the Magistrate Court of Cherokee County, Georgia, where Plaintiff filed the State Court Action.

6. Simultaneously with the filing of this Notice of Removal, NewRez is serving Plaintiff with a copy of this Notice of Removal and filing a copy of the Notice of Removal in the office of the Clerk of the Cherokee County Magistrate Court, pursuant to 28 U.S.C. § 1446(d).

7. NewRez has attached hereto as “**Exhibit 1**” a copy of the process, pleadings, filings, and orders on file with the Clerk of the Cherokee County Magistrate Court.

FEDERAL QUESTION JURISDICTION - 28 U.S.C. § 1331

8. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331 because Plaintiff has alleged claims against NewRez that arise under federal law.

9. The Supreme Court has held that federal courts have jurisdiction to hear, originally or by removal from state court, cases where federal law creates the cause of action being alleged or when a claimant’s right to relief depends on the resolution of a substantial question of federal law. *See Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 9 (1983) (explaining that “a case

‘[arises] under’ federal law where the vindication of a right under state law necessarily turns on some construction of federal law”).

10. In his Statement of Claim, Plaintiff alleges that NewRez violated RESPA. (*See* Ex. 1, Statement of Claim.)

11. As such, the resolution of this matter turns upon a federal question, and this Court has jurisdiction over this case. *See Pretka v. Kolter City Plaza II, Inc.*, 608 F.3d 744, 754 (11th Cir. 2010) (noting the removing defendant satisfies its burden when it “makes specific factual allegations establishing jurisdiction and can support them (if challenged by the plaintiff or the court) with evidence combined with reasonable deductions, reasonable inferences, or other reasonable extrapolations”).

ADDITIONAL REQUIREMENTS FOR REMOVAL

12. NewRez has paid all fees required by law in connection with this Notice of Removal.

13. All other requirements for removal and for federal court jurisdiction are satisfied.

14. By filing this Notice of Removal and the associated exhibits, NewRez does not waive any objections it may have as to service, jurisdiction, or venue, or any other claims, defenses, or objections that are or may be available to it in this

action. Furthermore, NewRez makes no admission of fact, law, or liability by this Notice, and expressly reserves all defenses, motions, and pleas.

CONCLUSION

Pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, and in conformance with the requirements set forth in 28 U.S.C. § 1446, NewRez removes this action from the Magistrate Court of Cherokee County, Georgia to the United States District Court for the Northern District of Georgia, Atlanta Division, and prays that all further proceedings in the State Court Action be stayed and that NewRez receives all relief to which it is entitled.

Dated: April 20, 2023.

LOCKE LORD LLP

/s/ Steven J. Flynn
Steven J. Flynn
Georgia Bar No. 313040
steven.flynn@lockelord.com
Noah J. Mason
Georgia Bar No. 791681
noah.mason@lockelord.com
Terminus 200, Suite 2000
3333 Piedmont Rd. N.E.
Atlanta, GA 30305
404-870-4600
404-872-5547 (fax)

*Attorneys for Defendant
NewRez, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on April 20, 2023, I electronically filed the foregoing **NOTICE OF REMOVAL** with the Clerk of Court using the CM/ECF system. I further certify that a copy of this **NOTICE OF REMOVAL** was e-filed with the Clerk of the Magistrate Court of Cherokee County, Georgia, and served on the party below via first class U.S. Mail, postage prepaid, and e-mail:

Michael Lutman
2828 South McCall Road Unit 32-14
Englewood, Florida 34224
LeatherNeck3112@gmail.com

/s/ Steven J. Flynn
Steven J. Flynn
Georgia Bar No. 313040
steven.flynn@lockelord.com

*One of the Attorneys for Defendant
NewRez, LLC*